



Natural Resources Conservation Service
375 Jackson Street, Suite 600
St. Paul, MN 55101-1854

70 Years
"A Partner in Conservation Since 1935"

Phone: (651) 602-7900
FAX: (651) 602-7914

Transmitted via Email

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MINNESOTA BULLETIN NO. 300-5-32

SUBJECT: LTP – TECHNICAL SERVICE PROVIDER (TSP) FINAL RULE

Purpose. To provide guidance information on the TSP Final Rule

Expiration Date: September 30, 2005

Late last year NRCS released the final rule for technical service providers (TSPs) to provide conservation technical assistance to the Nation's farmers and ranchers. The TSP final rule can be found at <http://techreg.usda.gov> under "On-Line Resources".

The final rule details the revised process NRCS will follow to administer technical assistance through TSPs. The rule ensures certified TSPs will deliver high quality technical services to producers and allows NRCS to decertify those who fail to meet these quality standards. It also details the process NRCS will use to pay for TSP-provided services.

The final rule contains several significant changes which are listed below;

- Revised rules allow public entities to pursue how they will participate in TSP, they can either;
1) Seek 100% TSP reimbursement or; 2) Partner with NRCS through a Contribution Agreement and donate 50% of the value of the technical services.

When a public entity (including SWCDs) will seek 100% TSP reimbursement they must prove to the satisfaction of the State Conservationist that they do not have a competitive advantage over other private sector TSPs. The following actions are ways that a public entity could pro-actively demonstrate that they do not have an unfair advantage;

1. They must have competent trained staff that are certified on TechReg, they can not use NRCS designated TAA;
2. Their TSP activity must be conducted outside of the NRCS office location;
3. They must reclude themselves from decisions involving USDA conservation program priorities set by the Local Work Group;
4. They must not use information subject to the Privacy Act to gain access to clients or information concerning where TSP services will be performed.

- Public entities cannot have both a Contribution Agreement and pursue 100% TSP reimbursement; they must choose one or the other. If they have an existing Contribution Agreement and choose to pursue 100% reimbursement their Agreement will be canceled.
- TSPs are responsible for the services that they and their subcontractors provide. New liability language continues to protect USDA and program participants while removing the need for project specific indemnification and warranty provisions.
- Participant's cannot receive a cost-share credit (or additional funds) if they obtained TSP services below the not-to-exceed rate.
- As of January 1, 2005 states were assigned the responsibility to verify that TSP applicants meet the criteria to provide technical assistance. The TSP final rule specifies that the state conservationist must ensure that TSPs meet the certification criteria outlined in TechReg. States will certify that all new TSPs within their jurisdiction are qualified to provide technical assistance, including design, layout, installation and checkout of approved conservation practices. The verification process is not mandatory for any TSPs certified before January 1. Unless specific problems arise, all TSPs certified prior to January 1 will only have their credentials reviewed when they renew their current certifications or apply for new certifications. Verification of TSPs will be the following:
 - training, education and experience requirements;
 - references (documenting technical service work and locations);
 - state requirements such as licensing, permits, etc.;
 - certification history.

Many TSPs think they cannot charge more than the NRCS not-to-exceed rates for technical services. That is simply not the case. Private sector TSPs are free to negotiate any rate with a program participant. Current policy directs NRCS to pay the program participant for the technical services obtained up to the NRCS not-to-exceed rates contained in the program participant's conservation contract with USDA. The rates are based on the time and hourly rate, plus overhead, needed for NRCS staff to deliver technical assistance to program participants. These rates reflect the natural resource, regulatory, social, and economic conditions that exist within each of six regions in Minnesota where workload data has been collected and not-to-exceed rates have been calculated.

When the costs to use a TSP exceed the maximum NRCS payment rate, the program participant must pay the difference. Some situations warrant an exception to using the published not-to-exceed rates. For instance, NRCS may approve a higher rate for a one-time, specific need or when not-to-exceed rates are not available for a particular practice. The agency also may approve a higher rate when unique environmental or other natural resource conditions complicate practice implementation. Field staff must receive prior approval to use any TSP rate not currently posted on the Minnesota not-to-exceed web site.

For more information on the 2004 not-to-exceed rates, please visit <http://www.tsp-nte.nrcs.usda.gov/>. The 2003 rates are archived at <http://www.tsp-nte.nrcs.usda.gov/TSPNTE03Archive/>.

NRCS has set aside \$45 million to fund TSPs in fiscal year 2005; Minnesota's goal is \$1.6 million. The agency budgeted \$40 million in fiscal year 2004, but obligated \$49.2 million, of which 57 percent went to private sector TSPs such as consultants and firms. Since TSP is a process, not a program, it does not have its own budget. Funds for TSP come from NRCS programs, primarily the Environmental Quality Incentives Program (EQIP) but also the Conservation Reserve Program, Wetlands Reserve Program, and Conservation Technical Assistance.

Direct questions on verifying TSP credentials to Jeff St. Ores; questions on Contribution Agreements can be directed to your ASTC (FO).

WILLIAM HUNT
State Conservationist

DIST: ASTC (FO)
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